

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RYAN CHARLES DIEMOND,

Plaintiff,

v.

NOAH NAGY,

Defendant.

Case No. 23-cv-12184

Honorable Robert J. White

Magistrate Judge Elizabeth A. Stafford

**ORDER GRANTING PLAINTIFF'S FIRST MOTION TO AMEND HIS
COMPLAINT (ECF NO. 13) AND STRIKING HIS DUPLICATE MOTION
TO AMEND (ECF NO. 20)**

Plaintiff Ryan Charles Diemond, a prisoner of the Michigan Department of Corrections (MDOC), filed this pro se civil rights action under 42 U.S.C. § 1983, alleging that Defendant Noah Nagy has failed to accommodate his medical conditions by denying him access to the prison's legal writer program. ECF No. 1. Diemond moves to amend his complaint as a matter of right. ECF No. 12; ECF No. 13. The Honorable Robert J. White referred the case to the undersigned for all pretrial matters under 28 U.S.C. § 636(b)(1). ECF No. 23.

Under Federal Rule of Civil Procedure 15(a)(1), a party may amend his pleadings once as a matter of course within 21 days after serving it.

When a defendant waives service, a summons and complaint are deemed served “at the time of filing the waiver.” Fed. R. Civ. P. 4(d)(4); see Charles Alan Wright & Arthur R. Miller, 4A Fed. Prac. & Proc. Civ. § 1092.1 (4th ed.) (“When the waiver is returned and filed, then service will be deemed to have occurred when the waiver is filed.”).

Nagy’s waiver of service was filed on March 7, 2024, and Diamond timely amended his complaint as a matter of course on March 21, 2024. ECF No. 12; ECF No. 13. Thus, the Court **GRANTS** Diamond’s first motion to amend and treats that filing as the operative complaint. ECF No. 13.

Diamond filed a second motion to amend on July 16, 2024. ECF No. 20. But because that motion duplicates his first motion to amend, the Court **STRIKES** it as improperly filed.

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

Dated: August 27, 2024

NOTICE TO PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this order, any party may file objections with the assigned district judge. Fed. R. Civ. P. 72(a). The

district judge may sustain an objection only if the order is clearly erroneous or contrary to law. 28 U.S.C. § 636. **“When an objection is filed to a magistrate judge’s ruling on a non-dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or a district judge.”** E.D. Mich. LR 72.2.

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court’s ECF System to their email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 27, 2024.

s/Julie Owens _____
JULIE OWENS
Case Manager